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Eastern District of Wisconsin Rejects Two-Step Certification Approach for Collective Actions Under the Fair Labor Standards Act (FLSA)



In *Laverenz v. Pioneer Metal Finishing, LLC*, plaintiff asserted claims on a collective basis under the FLSA alleging the defendant's practices violated the FLSA.

Plaintiff moved for conditional certification based on the two-step method to certify collectives. In the first step, which is conditional certification, courts determine if the plaintiff and proposed class members are similar enough to allow notice to be sent to prospective plaintiffs. To meet the standard for similarity, plaintiffs must only present a "minimal" or "modest factual showing." For the second step, which is final certification, the court uses a higher standard to determine if the plaintiff and opt-in class members are "similarly situated."

The defendant argued the District Court for the Eastern District of Wisconsin should reject the two-step certification process. It acknowledged the approach had been widely used by Seventh Circuit district courts but pointed to recent decisions by the Fifth and Sixth Circuits, departing from this standard for conditional certification. In *Swales v. KLLM Transp*, the Fifth Circuit flatly rejected the two-step approach in favor of a one-step method. Shortly after, the Sixth Circuit in [Clark v. A&L Homecare and Training Ctr., LLC](#) established a higher standard for showing other employees were "similarly situated."

U.S. District Judge William C. Griesbach acknowledged that the Seventh Circuit had yet to definitively reject or accept the two-step certification process. However, Judge Griesbach said the district court would follow the Fifth Circuit's approach going forward and denied the plaintiff's motion for conditional certification. The court found the two-step approach to be inconsistent with the FLSA as it can result in employees who may not be "similarly situated" joining a lawsuit. The court also said the approach was, among other things, inefficient and could be a waste of the court's time.

A [growing number of courts](#) have recently moved away from applying what had been the traditional two-step certification process. Employers with questions about FLSA collective action and the certification process

should contact experienced counsel.

## **Authors**

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